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DISTRICT COURT OF GUAM

AUG 17 2016

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AUG 19 2016

JEANNE G. QUINATA
CLERK OF COURT

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IN THE UNITED STATES DISTRICT COURT

FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BYONG HEE KANG,

Defendant.

CRIMINAL CASE NO. 14-00034

AMENDED
PLEA AGREEMENT

The United States and Defendant, BYONG HEE KANG, enter into the following plea agreement:

Charge and Penalties

1. Defendant agrees to enter a guilty plea to Count 1 of the indictment charging him with Conspiracy to Commit Visa Fraud in violation of 18 U.S.C. § 371. The United States agrees to move to dismiss the remaining counts of the indictment upon sentencing.

2. Defendant understands and acknowledges the following:

(a) A conviction for Conspiracy to Commit Visa Fraud in violation of 18 U.S.C. § 371 carries a maximum penalty of five (5) years imprisonment; a \$250,000 fine; a three (3) year

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1 period of supervised release; and a \$100 special assessment. In addition to these maximum
2 penalties, any violation of a supervised release order could lead to an additional term of up to
3 two years imprisonment, pursuant to 18 U.S.C. § 3583(e)(3). Defendant agrees to pay the
4 special assessment at or before sentencing.

5 (b) Pursuant to the Mandatory Victim Restitution Act, the Court must order that
6 the Defendant pay restitution to any victim of the offense of conviction, pursuant to 18 U.S.C. §
7 3663A.

8 (c) To forfeit \$1,875,407.12 in U.S. Currency seized from the Guam
9 Construction Company (GCC) corporate bank account at First Hawaiian Bank (FHB), FHB xx-
10 xx4434 ("FHB 4434"), Dededo, Guam as proceeds from and/or involved in the offense of
11 conviction, the visa fraud, a violation of 18 U.S.C. § 1546, and subject to forfeiture pursuant to
12 18 U.S.C. § 982(a)(6)(A) *pm 5/20 BA*.

13 **Voluntariness & Waiver of Trial Rights**

14 3. Defendant affirms that he has read this plea agreement and fully understands it.
15 Defendant acknowledges that he enters this plea agreement and his decision to plead guilty
16 voluntarily, and not because of any force, threats, promises or inducements, apart from the
17 promises and inducements set forth in this plea agreement. He agrees to plead guilty because he
18 is in fact guilty of the charged offense.

19 4. Defendant acknowledges that he understands that by entering a plea of guilty, he is
20 waiving – that is, giving up – the following rights guaranteed to him by law and by the
21 Constitution of the United States:

22 (a) the right to plead not guilty and to persist in a plea of not guilty;

23 (b) the right to a jury trial;

1 (c) the right to be represented by an attorney and, if necessary, to have the Court
2 appoint counsel at trial and all stages of the proceedings;

3 (d) the right at trial to confront and cross-examine witnesses against him;

4 (e) the right to remain silent at trial, with such silence not being used against him
5 in any way;

6 (f) the right, should he choose, to testify on his own behalf and to present
7 evidence;

8 (g) the right to compel witnesses to appear at such a trial and to have them testify
9 on his behalf;

10 Defendant understands that any statement he gives under oath in connection with this
11 guilty plea may be used against him by the United States in a prosecution for perjury or false
12 statement.

13 Dismissal of Indictment

14 5. The United States agrees to move to dismiss the remaining charges in the indictment
15 at the time of sentencing. *Superseding* *W.F. Q. BA*

16 Elements of the Offense & Factual Basis

17 6. Defendant understands and agrees that to establish the offense of Conspiracy to
18 Commit Visa Fraud in violation of 18 U.S.C. § 371, the United States must prove each of the
19 following elements beyond a reasonable doubt:

20 First: On or about the dates alleged in the indictment, there was an agreement
21 between two or more persons to commit the crime of visa fraud, as defined by 18
U.S.C. § 1546(a); *Superseding* *W.F. Q. BA*

22 Second: the defendant became a member of the conspiracy knowing of at least
23 one of its objects and intending to help accomplish it; and

24 Third: one of the members of the conspiracy performed at least one

1 overt act for the purpose of carrying out the conspiracy.

2 7. The United States and Defendant stipulate and agree to the following facts:

3 (a) Defendant was born in 1928 and is a citizen of the United States.

4 (b) Guam Construction Company, incorporated in Guam in 1982, did business in
5 Guam as a general contractor for the construction, repair and remodeling of various building
6 structures and the improvement of real estate. (Guam Construction Company is sometimes
7 referred to here as "GCC" and as "the company.")

8 (c) BYONG HEE KANG ("Defendant B. KANG") was the company's president
9 and treasurer. As the company's president, Defendant B. KANG ultimately made all the
10 business decisions for Guam Construction Company, including recruitment of alien workers,
11 employee hiring, pay and designation and assignment of job duties.

12 (d) Choon H. Kang (C. Kang) was the company's vice president.

13 (e) Antonia Bautista was the company's office manager and corporate secretary.
14 She was employed with GCC since on or about 1994. Antonia Bautista started as an office
15 secretary and was later promoted to office manager.

16 (f) During the period from 1995 until 2009 Defendant B. KANG in his capacity
17 as GCC's president, petitioned for numerous alien workers from the Philippines and Korea under
18 the H-2B nonimmigrant visa program. The majority of the workers were Philippine Nationals
19 recruited and hired in the Philippines by Defendant B. KANG and GCC Office Manager Antonia
20 Bautista, using a Philippine employment service agency managed by two individuals. Additional
21 H-2B workers from Korea were recruited by C. Kang and petitioned by Defendant B. KANG.

22 (g) GCC is engaged in the business of general contracting. GCC was awarded
23 contracts from the federal and local governments as well as private contracts in the construction
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1 industry. Several foreign workers, who were petitioned by Defendant B. KANG under the H-2B
2 program, confirmed that they worked other jobs for GCC not authorized by their H-2B visas.
3 Several of these workers were recruited and hired by GCC based on their construction related
4 specializations but fraudulently petitioned under other job categories. Once in Guam, several of
5 these H-2B workers primarily worked in their specialized occupations or other undisclosed
6 occupations for GCC and not in the job categories they were petitioned as, in violation of U.S.
7 immigration law.

8 (h) GCC petitioned workers from the Philippines and South Korea to work for
9 the company under the H-2B visa program. In the Philippines, GCC used an employment
10 recruitment agency called Interworld Placement Agency (IPA), which was managed by V.G. and
11 E.I., who are both Filipino Nationals, to recruit foreign construction workers from the
12 Philippines to work in Guam for GCC. GCC also recruited foreign laborers from South Korea to
13 work in Guam for the company. As GCC's vice president, C. Kang was responsible for the
14 recruitment of Korean construction workers for the company.

15 (i) C. Kang travelled to Korea and posted job advertisements for GCC using a
16 Korean government employment agency which managed an employment website called
17 Worldjobs. C. Kang interviewed and assisted job applicants and referred these job applicants to
18 Defendant B. KANG for hiring. Although C. Kang was responsible for employee recruitment in
19 Korea, all hiring decisions were made by Defendant B. KANG. Moreover, Defendant B. KANG
20 was the petitioner and signatory official for all I-129 petitions used to sponsor foreign labor from
21 the Philippines and South Korea to work in Guam under the H-2B visa program.

22 (j) Utilizing the H-2B visa program, GCC recruited, hired, and sponsored several
23 foreign workers from the Philippines to work in Guam for GCC. Defendant B. KANG, assisted
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1 by V.G. and E.I., recruited and hired foreign workers in the Philippines for skilled positions,
2 including, but not limited to, engineering, architecture, carpentry, electricians, and others. C.
3 Kang recruited and hired alien workers in South Korea for similar skilled positions and other
4 construction related occupations.

5 (k) When an alien job applicant was selected by GCC for a skilled position, GCC
6 and/or IPA personnel told some of the applicants that there were no available visas for the jobs
7 that they applied and were hired for. Instead, GCC and IPA personnel told some of the
8 applicants that they would be petitioned into Guam under another job category utilizing the H-2B
9 visa program.

10 (l) At various times, when a foreign applicant was selected for and accepted a
11 position with GCC under their specialized skill(s), C. Kang, V.G., E.I and others with the
12 knowledge and consent of Defendant B. KANG, instructed the workers to revise their job
13 applications, resumes, and other supporting employment documents to falsely match their
14 petitioned occupations as listed on the I-129 Petition and reflected on the H-2B visa applications.
15 Additionally, some the workers were told to obtain false employment certifications and were
16 instructed to misrepresent their job qualifications during the visa interviews to create the false
17 impression that they were skilled and qualified in their petitioned occupations.

18 (m) GCC applied for labor certifications through GDOL for specific
19 construction-related jobs, primarily as a carpenter or plasterer, in connection with specific
20 construction projects on Guam including the Guam International Airport Fence Project and
21 various projects under the U.S. Air Force's "Simplified Acquisition of Base Engineer
22 Requirements" (SABER) program, among others.

23 (n) GCC submitted several applications for labor certifications to request for
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1 multiple employees to be petitioned under the H-2B program. GCC's office manager Antonia
2 Bautista, at the direction of Defendant B. KANG prepared the company's applications for labor
3 certifications. Defendant B. KANG signed and certified the labor certification applications as
4 GCC's president, and the company submitted the labor certification applications to the
5 Government of Guam for approval.

6 (o) Upon approval of the GDOL labor certifications, Antonia Bautista, under the
7 direction of Defendant B. KANG, prepared and filed with USCIS, the Form I-129's -- Petitions
8 for Nonimmigrant Worker, and submitted the petitions, with supporting documents including
9 labor certifications, applicant resumes, employment certification forms and other documents. At
10 the time the aforementioned I-129 petitions and supporting documents were filed with USCIS,
11 Defendant B. KANG had knowledge that the listed occupations of the workers were intentionally
12 misrepresented on the petitions in an effort to facilitate their entry into the U.S. by fraudulently
13 obtaining H-2B visas. The workers were in fact petitioned, recruited, and hired by Defendant B.
14 KANG specifically for their skills and qualifications in other undisclosed occupations not listed
15 on the I-129 petitions, and were to be used by the company to work in those undisclosed job
16 categories.

17 (p) After the H-2B workers arrived in Guam, Defendant B. KANG caused GCC
18 to employ them in skilled occupations not authorized on their H-2B visas -- occupations
19 including, but not limited to, electricians, engineers, architects, site managers, heavy equipment
20 mechanics, heavy equipment operators, and others. Several H-2B workers worked for GCC in
21 their specialized fields and not in the jobs authorized by their labor certifications, I-129 Petitions
22 and H-2B visas. Defendant B. KANG tracked the actual skill sets of his H-2B workers by
23 instructing his personnel to create detailed spreadsheets identifying the actual skilled
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1 construction trade of each H-2B worker. Defendant B. KANG and others used the spreadsheets
2 for project scheduling and job assignments. Several H-2B workers petitioned by Defendant B.
3 KANG worked jobs for GCC that would have entitled them to higher wages but the workers
4 were instead paid based on their petitioned occupations, resulting in lower wage rates based on
5 GDOL standards.

6 (q) After the H-2B workers arrived in Guam and began working for GCC,
7 Defendant B. KANG filed I-129 petitions to extend the stay and employment several of workers
8 on Guam. Defendant B. KANG signed and certified all the I-129 extension petitions, which
9 were based on the workers' originally petitioned occupations, and not on the actual type of work
10 they performed for GCC on Guam.

11 (r) It was further part of the conspiracy that Defendant B. KANG and his co-
12 conspirators caused the following workers, among others, to be brought to Guam:

Worker (initials)	Worker's Country of Citizenship	Worker's Actual Occupation/Skill
R.D.C.	Philippines	Civil engineer
R.L.	Philippines	Civil engineer
R.S.	Philippines	Civil engineer
C.K.L.	Korean	Civil engineer
A.G.	Philippines	Tile-setter and mason
E.V.	Philippines	Electrician
N.B.	Philippines	Carpenter
A.C.	Philippines	Civil engineer
R.R.	Philippines	Civil engineer
W.C.	Philippines	Mechanical engineer
P.A.	Philippines	Electrical engineer
K.H.L.	Korea	Heavy equipment mechanic
H.M.	Philippines	Carpenter and plumber
M.C.	Philippines	Carpenter/mason/painter
J.S.	Philippines	Mason
A.F.	Philippines	Mason
G.M.	Philippines	Architect (AutoCAD operator)
A.D.	Philippines	Carpenter
K.S.L.	Korean	Construction manager and supervisor
N.A.	Philippines	Electrician
M.F.	Philippines	Electrician
I.T.	Philippines	Mason
R.M.	Philippines	Electrician

E.S.	Philippines	Electrician
M.G.	Philippines	Construction supervisor and mason

(s) It was further part of the conspiracy that Defendant B. KANG and his co-conspirators attempted to cause the following workers, among others, to be brought to Guam:

Worker (initials)	Worker's Country of Citizenship	Worker's Actual Occupation/Skill
R.G.	Philippines	Civil engineer
D.T.	Philippines	Steelworker

(t) In furtherance of this conspiracy, and to effect its objectives, on or about the following dates, Defendant B. KANG and his co-conspirators performed and caused to be performed the following overt acts:

No.	Date	Overt Act
1	November 18, 2004	B. Kang signed and caused the filing of an I-129 petition (WAC-05-034-50584), prepared by Office Manager and submitted to USCIS, to allow R.D.C and R.L., both Philippine nationals and skilled engineers, to obtain H-2B visas to enter the U.S. as carpenters
2	October 21, 2005	B. Kang signed and caused the filing of an I-129 petition (WAC-06-018-52169), prepared by Office Manager and submitted to USCIS, to allow D.T., a Philippine national and a skilled steelworker and N.A., a Philippine national and a skilled electrician, to obtain H-2B visas to enter the U.S. as plasterers
3	December 4, 2005	B. Kang signed and caused the filing of an I-129 petition (WAC-06-019-52131), prepared by Office Manager and submitted to USCIS, to allow R.S., a Philippine national and skilled engineer, to obtain an H-2B visa to enter Guam as a carpenter
4	November 13, 2006	B. Kang signed and caused the filing of an I-129 petition (EAC-07-031-50061), prepared by Office Manager and submitted to USCIS, to allow E.S., a Philippine national and skilled electrician, to enter Guam using an H-2B carpenter visa
5	April 16, 2007	C. Kang posted a job advertisement (Job Certificate #J20070416678) for a GCC construction machinery and mechanic position in a Korean job recruitment website named Worldjob. Based on the job advertisement, C. Kang recruited and hired K.H.L for the mechanic position but told K.H.L that there were no available mechanic visas so K.H.L would have to enter Guam with an H-2B carpenter visa
6	May 7, 2007	B. Kang signed and caused the filing of an I-129 petition (WAC-07-160-53961), and submitted to USCIS, to allow C.K.L and G.W.L, both Korean nationals and skilled engineers and K.H.L., a Korean National and skilled

		mechanic, to obtain H-2B visas to enter Guam as carpenters
7	August 16, 2007	B. Kang signed and caused the filing of an I-140, Petition for an Immigrant Worker (LIN0800256313), sponsoring R.S. as a carpenter
8	August 16, 2007	B. Kang signed and caused the filing of an I-140, Petition for an Immigrant Worker (LIN0800753560), sponsoring R.D.C. as a carpenter
9	August 17, 2007	C. Kang had K.H.L sign a GCC employment contract and accompanied K.H.L to the U.S. Embassy in Korea for the visa interview. On the same day, K.H.L was approved an H-2B carpenter visa
10	September 13, 2007	B. Kang signed and caused the filing of an I-129 petition (WAC-07-269-51935), prepared by Office Manager and submitted to USCIS, to allow N.B., M.G., H.M., M.C., J.S., A.F., G.M., A.G., E.V., all being skilled in various construction related occupations, to enter the U.S. using H-2B plasterer visas
11	September 24, 2007	B. Kang signed and caused the filing of an I-129 petition (WAC0727552335), prepared by Office Manager and submitted to USCIS, to allow N.A., a Philippine national and skilled electrician, to extend his employment in Guam under an H-2B plasterer visa
12	May 23, 2008	B. Kang signed and caused the filing of an I-129 petition (WAC-08-168-51670), prepared by Office Manager and submitted to USCIS, to allow R.R., W.C., P.A., R.G. and A.C., all Philippine nationals and skilled engineers, to enter Guam with H-2B carpenter visas
13	May 23, 2008	B. Kang signed and caused the filing of an I-129 petition (WAC-08-168-50792), prepared by Office Manager and submitted to USCIS, to allow A.D., N.A., M.F., I.T. and R.M., all being Philippine nationals and skilled in various construction related occupations, to enter the U.S. using H-2B plasterer visas
14	May 27, 2008	B. Kang signed and caused the filing of an I-129 petition (WAC-08-168-50359), prepared by Office Manager and submitted to USCIS, to allow K.S.L., a Korean national and skilled construction supervisor, to obtain an H-2B visa to enter the U.S. as a carpenter
15	August 31, 2009	B. Kang signed and caused the filing of an I-129 petition (WAC0923650821), prepared by Office Manager and submitted to USCIS, to allow K.S.L., a Korean national and skilled construction supervisor, to obtain an H-2B visa to enter the U.S. as carpenter
16	July 2010	C. Kang threatened K.S.L, who B. KANG sent back to Korea because K.S.L was caught by GDOL working an unauthorized job in Guam, for requesting his overtime payment. C. Kang told K.S.L that she would hire someone in Korea to take that money back from him

(u) Through his visa fraud scheme, \$1,875,407.12 deposited in the Dededo,

1 Guam branch, First Hawaiian Bank account number xx-xx4434 (hereinafter "FHB 4434") held in
2 the name of GUAM CONSTRUCTION CO INC, constitutes, or is derived from or is traceable to
3 proceeds obtained directly or indirectly from violations of 18 U.S.C. §1546(a) (Visa Fraud) or a
4 conspiracy to commit such offense in violation of 18 U.S.C. §371.

5 (v) The parties agree that this stipulated statement of facts is sufficient to support
6 Defendant's guilty plea. It is made for that limited purpose and does not contain all facts relating
7 to the underlying criminal conduct.

8 **Sentencing Guidelines & Procedures**

9 8. Defendant understands and acknowledges that:

10 (a) The Sentencing Guidelines apply in this case. In determining a sentence,
11 the Court is obligated to calculate the applicable sentencing guideline range and to
12 consider that range, possible departures or variances under the Sentencing Guidelines, and other
13 sentencing factors under 18 U.S.C. § 3553(a);

14 (b) The United States will make its full discovery file available to the Probation
15 Office for its use in preparing the presentence report;

16 (c) The Court will rely on the facts established in this case – including, but not
17 limited to, the facts Defendant stipulates to in this plea agreement – in determining the applicable
18 offense level and resulting guideline range;

19 (d) Sentencing discussions between Defendant and defense counsel or between
20 defense counsel and the U.S. Attorney's Office are not part of this plea agreement, and
21 Defendant is not relying on the possibility of any particular guideline range or sentence based on
22 any such discussions;

23 (e) No promises or guarantees have been made to Defendant regarding either the
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1 guideline range or the sentence that will be imposed. The Court is not required to follow the
2 Sentencing Guidelines or to accept any sentencing recommendations made by the United States
3 or Defendant, and the Court may impose any sentence up to and including the maximum
4 penalties set out above. Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal
5 Procedure, if the Court does not accept a sentencing recommendation made by the United States,
6 Defendant nevertheless has no right to withdraw his guilty plea.

7 **Cooperation**

8 9. Defendant agrees to make a full, complete and truthful statement regarding his
9 involvement in criminal conduct, as well as the involvement of all others known to him.
10 Defendant agrees to testify fully and truthfully at any trials or hearings. Defendant understands
11 that this plea agreement is not conditioned on the outcome of any trial. Defendant further
12 understands, however, that this plea agreement is contingent on complete and truthful testimony
13 by Defendant in response to questions asked by the Court, the prosecutor, or lawyers for any
14 party.

15 10. If Defendant provides self-incriminating information as part of his cooperation
16 regarding the unlawful activities of others, the United States agrees not to use such information
17 against Defendant at his sentencing. Such information may be revealed to the Court but shall not
18 be used against Defendant in determining Defendant's sentence range. There shall be no such
19 restrictions on the use of information: (a) previously known to law enforcement agencies; (b)
20 revealed to law enforcement agencies by, or discoverable through, an independent source; (c) in
21 a prosecution for perjury or giving a false statement; or (d) in the event there is a material breach
22 of this agreement by Defendant.

23 11. Defendant understands and agrees that his sentencing date may be continued by the
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1 Court until after the indictment and trial of others, so as to enable the United States and the Court
2 to assess Defendant's cooperation.

3 **Agreements of the United States**

4 12. The United States agrees to recommend that the Court, in determining Defendant's
5 sentencing guideline range, apply the maximum available reduction for acceptance of
6 responsibility. This recommendation, however, is based on facts currently known to the United
7 States and is contingent on Defendant accepting responsibility according to the factors set forth
8 in § 3E1.1 of the Sentencing Guidelines. The United States is free to withdraw this
9 recommendation if Defendant has previously engaged in any conduct which is unknown to the
10 United States and is inconsistent with acceptance of responsibility, if he does not fully perform
11 under the forfeiture terms of this agreement, or if he engages in any conduct between the date of
12 this plea agreement and the sentencing hearing which is inconsistent with acceptance of
13 responsibility.

14 13. The United States agrees to recommend at sentencing that the Court impose a
15 sentence at the low end of the applicable guideline range. Moreover, the parties agree that §
16 5H1.2 of the Sentencing Guidelines is applicable at sentencing. If, however, the United States
17 determines that Defendant has provided substantial assistance in the investigation or prosecution
18 of another person, the United States agrees to move the Court at sentencing, pursuant to § 5K1.1
19 of the Sentencing Guidelines, to impose a sentence below the otherwise applicable sentencing
20 guideline range. The determination of whether defendant has provided such substantial
21 assistance rests entirely within the discretion of the United States Attorney's Office. Defendant
22 acknowledges that even if the United States makes such a motion, the Court is not required to
23 reduce Defendant's sentence.

1 **Forfeiture**

2 14. The Defendant agrees to the immediate forfeiture of the \$1,875,407.12 in U.S.
3 Currency seized from FHB 4434, Dededo, Guam branch on August 1, 2014 as proceeds from
4 and/or involved in the offense of conviction, the visa fraud, a violation of 18 U.S.C. § 1546, and
5 subject to forfeiture pursuant to 18 U.S.C. § 982(a)(6)(^(A) *mirrored* ⁽²⁾ *BA*). Furthermore, the Defendant consents
6 to the immediate entry of a preliminary order of forfeiture as to said \$1,875,407.12. The
7 Defendant has/had an interest in the \$1,875,407.12; and such property constitutes, or was
8 proceeds the Defendant obtained, directly or indirectly, as a result of the visa fraud charged in
9 the Superseding Indictment.

10 15. Defendant does hereby, forfeit, release, and/or transfer all interests in the property
11 described above, and agrees to take all steps deemed necessary by the United States Attorney to
12 ensure that clear title, ownership, and possession vests in the United States of America,
13 including, but not limited to, the signing of all instruments necessary to pass title, the approval
14 and signing of any stipulation for judgment or consent decree of forfeiture, and of any other
15 documents necessary to effectuate such transfers and vest clear title in the Government.

16 17. The Defendant agrees to forfeit all interests he owns in the \$1,875,407.12 in U.S.
17 Currency seized from the co-defendant's GCC corporate account FHB 4434. With respect to any
18 asset which the Defendant has agreed to forfeit, the Defendant waives any constitutional and
19 statutory challenges in any manner (including direct appeal, habeas corpus, or any other means)
20 to any forfeiture carried out in accordance with this plea agreement on any grounds, including
21 that the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment to
22 the United States Constitution.

23 18. To the extent that the Defendant has entered into any agreement with others for the
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1 purpose of transferring assets or dividing assets obtained during the course of the visa fraud
2 conspiracy, the Defendant agrees that any such agreements shall be without effect for the
3 purpose of determining that those assets are subject to forfeiture or restitution remedies.

4 19. The defendant agrees to take all steps as requested by the United States, including
5 executing documents needed to pass clear title to accomplish the forfeiture of \$1,875,407.12. If
6 called upon to do so by the government, the defendant agrees to testify truthfully in any judicial
7 forfeiture proceeding regarding forfeiture matters, including any proceedings regarding any
8 third-party claims as to property subject to forfeiture in this matter.

9 20. The defendant further agrees to waive all interest in any of the above-described
10 assets in any judicial forfeiture proceeding. The defendant agrees to consent to the immediate
11 entry of orders of forfeiture for such property and waives the requirements of Federal Rules of
12 Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument,
13 announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.
14 The defendant acknowledges that he understands that the forfeiture of assets is part of the
15 sentence that may be imposed in this case and waives any failure by the court to advise him of
16 this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted or at sentencing.

17 21. The defendant further agrees to waive all constitutional and statutory challenges in
18 any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried
19 out in accordance with this plea agreement on any grounds, including that the forfeiture
20 constitutes an excessive fine or punishment.

21 22. The defendant agrees that the forfeiture provisions of this plea agreement are
22 intended to, and will, survive him, notwithstanding the abatement of any underlying criminal
23 conviction after the execution of this agreement. The forfeitability of any particular property
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1 pursuant to this agreement shall be determined as if defendant had survived, and that
2 determination shall be binding upon defendant's heirs, successors and assigns until the agreed
3 forfeiture, including any agreed money judgment amount, is collected in full.

4 23. The Defendant understands that his failure to perform the obligations relating to
5 forfeiture of the \$1,875,407.12 will void this Plea Agreement in its entirety at the option of the
6 government.

7 **Financial Disclosure Obligations**

8 24. Defendant agrees to submit to the U.S. Attorney's Office, within three weeks of the
9 execution of this plea agreement, a complete, accurate and truthful financial statement and
10 accompanying releases, in a form it provides and as it directs. Defendant agrees to disclose all
11 assets in which he has any interest or over which he exercises control, directly or indirectly,
12 including those held by a spouse, nominee or other third party. Defendant authorizes the U.S.
13 Attorney's Office to obtain a credit report on him to evaluate his ability to satisfy any financial
14 obligation imposed by the Court.

15 25. Defendant understands and agrees that any monetary penalties imposed by the Court
16 will be due and payable immediately and subject to immediate enforcement by the United States,
17 pursuant to 18 U.S.C. § 3613. Defendant understands that, by law, interest accrues on any
18 remaining balance of the debt. Defendant agrees not to dissipate assets. If Defendant is
19 financially unable to immediately pay any monetary penalties in full, Defendant agrees: (a) to
20 cooperate with the United States Attorney's Office; (b) to provide updated financial statements
21 upon request by the United States Attorney's Office and to keep the office advised about
22 Defendant's current address; and (c) for his debt to be placed on the Treasury Offset Program
23 and any tax refund/rebate offset program existing in his state of residency. Defendant
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1 understands that any funds captured by an offset program will be paid towards his monetary
2 penalties, but does not relieve him of his obligation to pay the monetary penalties in full.

3 **Consequences of Breach**

4 26. Defendant agrees that if he is deemed by the Court to be in material breach of any of
5 his obligations under this agreement: (a) Defendant shall not be entitled to withdraw his plea of
6 guilty made in connection with this agreement; (b) the United States may, in its discretion and at
7 its option, declare null and void any of its obligations under this agreement; and (c) the United
8 States may recommend whatever sentence it may deem appropriate. The issue of whether
9 Defendant is in material breach of this agreement shall be determined by the Court in a
10 proceeding at which the United States shall be required to establish breach by a preponderance of
11 the evidence. Defendant understands and agrees that the Federal Rules of Evidence shall not
12 apply at any such hearing, and that the United States may rely at the hearing on any statements or
13 evidence Defendant may have given during cooperation with law enforcement.

14 **Waiver of Post-Sentencing Rights**

15 27. Defendant voluntarily, knowingly and intelligently waives any right to appeal or to
16 collaterally attack any aspect of his conviction or sentence including, but not limited to, any
17 pretrial dispositions of motions and other issues. Defendant acknowledges and agrees that this
18 waiver shall result in the dismissal of any appeal or collateral attack Defendant might file
19 challenging his conviction or sentence in this case, other than an attack based on alleged
20 ineffective assistance of counsel, alleged involuntariness of the Defendant's guilty plea, or
21 alleged prosecutorial misconduct.

22 **Consequences of Withdrawal of Guilty Plea or Vacating of Conviction**

23 28. Defendant agrees that if he is allowed to withdraw his guilty plea or if any conviction
24

1 entered pursuant to this agreement is vacated or rendered invalid for any reason, the Court shall,
2 at the request of the United States, reinstate any charges that were dismissed as part of this
3 agreement. Defendant also agrees that within six months after the date the order vacating or
4 invalidating Defendant's conviction or allowing him to withdraw his guilty plea becomes final,
5 the United States may file additional charges against Defendant relating directly or indirectly to
6 the conduct underlying the guilty plea. Defendant waives his right to challenge any such
7 additional charges on the ground that they were not filed in a timely manner, including any claim
8 that they were filed after the limitations period expired.

9 **Completeness and Effect**

10 29. Nothing in this plea agreement shall bind any federal, state or local districts,
11 jurisdiction or law enforcement agency, other than the United States Attorney for the Districts of
12 Guam and the Northern Mariana Islands.

13 30. Defendant acknowledges that this is the only plea agreement in this. This plea
14 agreement cannot be modified other than by a writing signed by all parties, or by a modification
15 acknowledged by all parties on the record in Court.

16 31. Defendant waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A
17 (Statutory Note), for attorney's fees and other litigation expenses arising out of the investigation
18 or prosecution of this matter.

19 **Acknowledgments**


20 I am the defendant. I am entering into this plea agreement freely and voluntarily. I am
21 not now on or under the influence of any drug, medication, alcohol, or other intoxicant or
22 depressant, whether or not prescribed by a physician, which would impair my ability to
23 understand the terms and conditions of this agreement. By signing this agreement, I certify that I
24

1 have read it (or that it has been read to me in my native language). I have been fully informed by
2 counsel that a potential conflict of interest issue was raised as to counsel's representation of third
3 party intervenors (Antonia Bautista, Ki-Wook Han and Roland Salonga) in Superior Court of
4 Guam Civil Case no. CV0602-13 and, I knowingly waive any potential conflict and consent to
5 counsel's representation. My counsel has reviewed every part of this agreement with me and has
6 advised me of the implications of the sentencing guidelines.

7
8 DATED: 8/15/14


BYONG HEE KANG
Defendant

10
11 DATED: 8/15/14


DAVID J. LUJAN
Attorney for Defendant

13 ALICIA A.G. LIMTIACO
14 United States Attorney
Districts of Guam and the Northern Mariana Islands

15
16 DATED: 8/16/16


STEPHEN F. LEON GUERRERO
Assistant U.S. Attorney

18
19 DATED: 8.16.16


BELINDA ALCANTARA
Assistant U.S. Attorney